HOUSE . . . . . No. 4343

Message from His Excellency the Governor returning with recommendation of amendment the engrossed Bill relative to sentencing and improving law enforcement tools (see House, No. 3818, amended). July 28, 2012.

The Commonwealth of Massachusetts

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July 28, 2012.

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment House Bill No. 3818, "An Act Relative to Sentencing and Improving Law Enforcement Tools."

As you know, there is much I support in this bill. The bill includes a new habitual offender provision designed to ensure that the most serious and dangerous repeat offenders remain safely behind bars. It also includes significant and retroactive reductions in the minimum mandatory time required for certain non-violent drug crimes. The bill also reduces from 1,000 to 300 feet the distance required to apply the enhanced penalties for drug offenses occurring in the vicinity of a school. The conferees worked hard on this bill and it shows. It is to a great degree balanced and responsible.

There is of course more work to be done beyond the scope of this bill. I am encouraged that Senate and House leaders have acknowledged that this bill is only a start and that we should revisit the suitability of mandatory minimum sentencing altogether early in the next legislative session. Updating the state wiretapping law and creating a mandatory system of post-release supervision should be a part of that work. The Commission to Study the Criminal Justice System established last year continues its work and will lay important groundwork to inform your consideration of these reforms.

There is one element that I believe cannot and should not wait until next session. I believe the new habitual offender law should include limited judicial discretion to ensure that this expansion of mandatory sentencing does not have unjust consequences. None of us is wise or prescient enough to foresee each and every circumstance in which the new habitual offender provisions may apply. The sentencing judge, who has observed all the witnesses and the defendant, heard all the evidence, and considered and ruled upon all the arguments throughout the course of the trial, is in the best position to appreciate all the facts. He or she should have some limited discretion, as judges in other states do, to allow parole eligibility after a period of time served.

The bill before me has what some members believe is a limited "safety valve." For the reasons stated in the Chief Justice's letter of 26 July (attached), the availability of a direct appeal to the Supreme Judicial Court is neither a practical nor a sufficient substitute for the direct consideration of the sentencing judge.

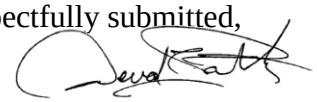
Under the proposed amendment, if the court determines that it is in the "interest of justice and upon a finding on the record of substantial and compelling reasons," the court would have the authority to allow parole eligibility for a habitual offender after serving 2/3 of the maximum sentence (or after 25 years in the case of a life sentence). The proposed amendment would also authorize the Commonwealth or the defendant to appeal this decision. This proposal was included in previous versions of the conference bill until the last moment.

I do not send this bill back to you lightly. I recognize that the time remaining is short in this formal legislative session, and there are many who would like to see this bill signed into law in its present form. Nevertheless, I believe that this single change would significantly improve this bill. I ask that you give this amendment your prompt and thoughtful consideration, and return the bill with the amendment included in time for me to sign it into law next week.

For these reasons, I recommend adding the following subsection to section 25 of chapter 279 of the general laws, as appearing in section 47 of the bill:

(e) Upon sentencing an individual convicted under paragraph (b), the court, upon motion of either party or on its own, may in the interest of justice and upon a finding on the record of substantial and compelling reasons provide that such individual be eligible for parole at not less than two-thirds of the maximum sentence provided, or when such sentence would otherwise require a sentence of life in prison provide that such individual be eligible for parole in twenty-five years. The granting or denial of such a motion may be appealed by either party to the appellate division of the superior court.

Respectfully submitted,



DEVAL L. PATRICK,
Governor.